



City of Harrisonburg, Virginia

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TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider two options for multiple Zoning Ordinance amendments and modifications to Title 4 Finance, Taxation, Procurement, which are all associated with proposed regulations to allow for “homestays” and “short term rentals” (i.e. Airbnbs, VRBOs, etc.). Changes to the Zoning Ordinance for Option 1 include adding a definition for “Short term rental” and eliminating the existing definition of “Bed and breakfast facilities” within Section 10-3-24, adding regulations for Off-Street Parking Regulations for Short Term Rentals to Section 10-3-25, and adding the “Short term rental” use as a special use permit within the following zoning districts: R-1, R-2, R-3 (Multiple Dwelling), R-3 (Medium Density), R-4, R-5, R-6, R-7, MX-U, B-1, and U-R. A new article titled Article DD. – Short Term Rentals is proposed with sections regulating and specifying: registration requirements and general regulations including penalties for operating a short term rental without first registering and limiting a contract with a guest for accommodation space to a maximum of thirty (30) consecutive nights. The sections of the Zoning Ordinance impacted by adding “Short term rentals” as a permissible special use permit include: 10-3-34, 10-3-40, 10-3-46, 10-3-48.4, 10-3-52, 10-3-55.4, 10-3-56.4, 10-3-57.4, 10-3-58.4, 10-3-85, and 10-3-180. These sections are amended by either adding “Short term rentals” as a new use for the district or by replacing the existing “Bed and breakfast facilities” use with “Short term rentals.” The “Short term rental” definition within the Zoning Ordinance is proposed as follows: “The provision of a bedroom or accommodation space within the principal building or any accessory building that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.” Zoning Ordinance Section 10-3-13 currently states that “[a]ny person, firm, or corporation found in violation of the Zoning Ordinance, upon conviction shall be guilty of a class 1 misdemeanor.” Section 10-3-13 is proposed to be amended to allow violations of Article DD to be subject to civil penalties of \$100.00 for the first offense, \$250.00 for the second offense, and \$500.00 for each subsequent offense arising from the same set of operative facts. Option 2 includes the same proposed amendments as those specified in Option 1, but includes a new use called “homestay.” The “homestay” definition within the Zoning Ordinance is proposed as follows: “In a single-family detached, duplex, or townhouse dwelling, the provision of a bedroom or accommodation space within the principal building that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy, and where the operator is present during the lodging period.” The new Article DD. - Homestays and Short Term Rentals would allow homestays to be rented for guest lodging for no more than forty-five (45) nights per calendar year; would limit the maximum number of adult guests at one time in a homestay unit to six (6); would restrict operators from marketing or using homestays as a location for weddings, receptions, or other events; and would require operators to maintain the property as their primary residence. A homestay would be permitted by right within a single-family detached, duplex or townhouse dwelling within the following zoning districts: R-1, R-2, R-3 (Medium Density), R-4, R-5, R-6, R-7, MX-U, B-1, and U-R. In addition to the proposed amendments

described in Option 1, the sections of the Zoning Ordinance impacted by adding “homestays” as a by right use include: 10-3-33, 10-3-39, 10-3-48.3, 10-3-51, 10-3-53.3, 10-3-56.3, 10-3-57.3, 10-3-58.3, 10-3-84, and 10-3-179. For both Option 1 and 2, Title 4 Finance, Taxation, Procurement Section 4-2-76.1 (2) would be modified by adding “short term rental” to the definition of “Hotel” and eliminating the reference to other lodging places that offer lodging for four (4) or more persons at any one time. Subsection (4) of Section 4-2-76.1 is also being modified by amending the definition of “Transient” by eliminating the words “hereinabove” and replacing them with “in this section.” For Option 2, “homestay” would also be added to the Title 4 definition of “Hotel.”

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: February 13, 2019

Chair Way read the two options for multiple Zoning Ordinance amendments and modifications to Title 4 Finance, Taxation, Procurement, which are all associated with proposed regulations to allow for “homestays” and “short term rentals” (i.e. Airbnbs, VRBOs, etc.).

Ms. Dang said that the discussion of short term rentals (STRs) has been ongoing for some time in Virginia, but it was not until the 2016 Session of the Virginia General Assembly (VGA) that the issue came to the forefront of major debate. During the 2016 session, the VGA considered SB 416 and HB 812, which was referred to as the Limited Residential Lodging Act. In brief, that bill was summarized by the Virginia General Assembly’s online Legislative Information System as “allow[ing] persons to rent out their primary residences or portions thereof for charge for periods of less than 30 consecutive days or do so through a hosting platform. Localities [were] preempted from adopting ordinances or zoning restriction[s] prohibiting such short term rentals, but [were] authorized to adopt ordinances requiring persons renting their primary residences to have a minimum of \$500,000 of liability insurance, prohibiting persons from renting their primary residences if they fail to pay applicable taxes, and requiring persons renting their primary residences to register with the locality. A hosting platform [was also required to] register with the Department of Taxation to collect and remit all applicable taxes on behalf of the property owner using the hosting platform.”

As described by the Legislative Information System, the 2016 bill “contain[ed] a reenactment clause and direct[ed] the Virginia Housing Commission to convene a work group to further study the issues presented in the bill and [to] make recommendations for consideration by the 2017 Session of the General Assembly.” At the October 25, 2016 City Council meeting, staff provided an in-depth review of the 2016 legislation and described how the City regulated STRs. The 2016 memorandum is included within this packet for reference.

In brief, staff’s 2016 memorandum described that STR operations were illegal in the City, except those that might operate within the B-1, Central Business District. Although they were allowed by right within the B-1 district, a property owner or resident could not simply begin advertising online and operate a STR because the occupancy of STRs is classified as transient and the Building Code categorizes transient dwelling spaces as a different use group than nontransient dwelling spaces. In other words, physical renovations could be required within the dwelling to allow for STRs to operate. Furthermore, the 2016 memorandum explained that if the Limited Residential Lodging Act was approved in 2017, the City would have been required to allow STRs by right within any residential district and within any type of dwelling unit. As noted in the memorandum, staff believed that allowing STRs by right would have been detrimental to the framework of how our Zoning Ordinance (ZO) protects neighborhoods from undesirable uses and activities not planned for in residential areas.

During the 2017 Session of the VGA, the reenactment clause for the 2016 bill was not approved. Instead, a bill was passed that preserved local authority to regulate STRs through general land use and zoning ordinances, along with providing clear authority for taxing such operations. The regulations are now

codified in the Code of Virginia Section 15.2-983 and titled “Creation of registry for short term rental of property.” (The approved legislation is included in the packet.) Shortly after the 2017 legislation was approved, staff began drafting regulations. By May 2017, a first draft was prepared so that staff could begin internally debating the matter and talking through all the potential issues.

First, it should be recognized that STRs, as a use, can be allowed by one of two ways—as a by right use or through approval of a special use permit (SUP). Secondly, there are many ways of regulating STRs (the minutes from previous Planning Commission and City Council meetings included in the packet likely cover most of those issues), however, the following is a brief list of things that could be considered when drafting regulations. Should STRs:

- be allowed in the City;
- be taxed at the same rates as other lodging establishments;
- be allowed by right or by SUP;
- be owner or proprietor occupied at all times;
- be the principal residence of the owner;
- be allowed only within certain zoning districts;
- be allowed only within certain types of dwelling units;
- be allowed to operate only a certain number of days per year;
- have a maximum number of contracts, people, or bedrooms; or
- have minimum parking requirements?

In considering the many questions involving STRs, staff evaluated how other localities are handling and regulating them and learned that there is no “one size fits all” model that works because every locality is different and has distinct community expectations, goals, and concerns. Virginia cities, counties and towns are taking different approaches. Localities are referring to them as different uses and managing them in diverse ways. A summary of how other localities regulate STRs is included in the packet.

Staff understands that STRs are desired uses to operate in the City and further recognizes that the “sharing economy” will continue to be a driving force in the country and in our community. In a joint publication of the Virginia Municipal League and the Center for State and Local Government Leadership at George Mason University, the article *The Sharing Economy: Implications for Local Government Leaders*, written by Frank Shafroth, recognizes that the sharing economy “has created new ways of conducting business” and “is simply stated, a trend towards renting or borrowing goods as opposed to owning them.” The article focuses on the issues surrounding transportation networking services—like UBER and LYFT—and home sharing (or STRs), where operators and consumers use Airbnb-like online platforms. The model of the sharing economy typically allows “strangers [to] share goods or services, connect[ed] through a website or an online application that is facilitated by a third-party business.” The central principle of the sharing economy is the “elimination of the need to incur ownership costs for items or services that may be rented cheaply and easily” while “owners of underused assets gain additional income by sharing” the item or service that is “convenient to their schedules.”

Staff recognizes there are three sides of the home sharing economy argument. In general, there are individuals that like the idea of allowing STRs as a by right use with no additional “hoops” to jump through, those that want to allow them but with appropriate controls and regulations, and those that would prefer an outright ban. As staff considered the idea of STRs, although there are many angles to concentrate on when drafting the regulations, we initially focused on allowing them in the City and

concentrated our efforts and concerns on the desires of the Comprehensive Plan with regard to affordable housing and protecting and conserving neighborhoods.

Staff introduced STR regulations to Planning Commission (PC) in March 2018. PC then discussed and debated the matter in April, May, and July, and finally made a recommendation to City Council in August 2018. City Council received Planning Commission's recommendation on September 11, 2018, but tabled the proposed STR regulations and noted that they wanted more time to understand the different options. They specifically asked to know what other localities were doing. At that time, Council Member Byrd noted that he liked the idea of somehow allowing the use by right. Staff returned to City Council in November 2018 to seek additional guidance to create opportunities for STRs as a by right use. Staff generally described where the process was heading with a by right option and while Council members expressed interest in continuing to explore the option, there was no indication as to whether that was the preferred option.

Staff is offering two options to amend multiple sections of the ZO to establish how STRs can legally operate within the City as well as to modify the City Code's Title 4 Finance, Taxation, Procurement to establish appropriate taxing for such uses. In brief, Option 1 proposes a use termed as "short term rentals" that would be allowed by special use permit (SUP) and Option 2 proposes the same STR use and an additional "homestay" use allowed by right with restrictions. A two-page table comparing homestays and STRs as proposed is included in the packet.

Option 1:

Option 1 of the proposed ZO amendments is similar to what was recommended by Planning Commission in August 2018 and presented to City Council on September 11, 2018. Option 1 would add a definition for "Short term rental" and would eliminate the existing definition of "Bed and breakfast facilities" within Section 10-3-24. The following is proposed (underlined text is to be added and text shown as stricken would be deleted):

Bed and breakfast facilities: See "short term rental." ~~A single family dwelling (including the principal residence and related buildings), occupied by the owner or proprietor, in which accommodations limited to ten (10) or less guest rooms are rented for periods not exceeding ten (10) consecutive days per guest.~~

Short term rental: The provision of a dwelling unit, a bedroom or accommodation space within the dwelling unit, or any accessory building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy.

Note that staff is proposing to keep the "Bed and breakfast facilities" definition listed in the ordinance, but to refer readers to the proposed "Short term rental" definition. Since bed and breakfast facilities have been an established use for almost two decades, we believed it was appropriate to help facilitate the understanding that bed and breakfast facilities would be considered STRs.

The new "Short term rental" use would be added to the SUP sections of each of the following zoning districts: R-1, R-2, R-3 (Multiple Dwelling), R-3 (Medium Density), R-4, R-5, R-6, R-7, MX-U, B-1, and U-R.

The amendment would also include the creation of a new article of the ZO, titled Article DD. – Short Term Rentals with sections regulating and specifying registration requirements and general regulations, which would require operators to complete a Short Term Rental Operator Registration following approval of the SUP by City Council and prior to beginning operations. The Registration would be valid January 1st (or from the date the registration first occurs) through December 31st and must be renewed annually. The fee for Registration is \$50 per year. While the proposed ordinance states that each registration shall be specific to the operator and property and is not transferable, it should be understood that the approved

SUP is specific only to the property, not the operator. The remaining portions of proposed Section 10-3-204 describe penalties for not registering which would be \$100 for the first offense and \$500 for each subsequent offense.

Proposed Section 10-3-205. – General regulations limits lodging contracts to a period of fewer than 30 consecutive nights, which is the maximum number of nights allowed by the Code of Virginia § 15.2-983. While the proposed ordinance allows food service to be offered to guests, it should be understood that a separate Lodging Permit from the Virginia Department of Health may be required and would be the responsibility of the operator to obtain. The proposed ordinance requires STRs to have the dates of trash and recycling collection posted prominently and requires operators to comply with the Uniform Statewide Building Code and Statewide Fire Prevention Code.

Those following the City’s progress with short term rental regulations may recall that in August and September 2018, Option 1 contained language that would have required operators to have an inspection of the property performed prior to operation and once annually to ensure compliance with the Uniform Statewide Building Code and Statewide Fire Prevention Code. This requirement has been removed from the proposed ordinance. While staff continues to have concerns for the safety of guests and their ability to safely occupy a building and to quickly exit a building in cases of an emergency, staff has learned that localities do not have the authority to require inspections to proactively ensure that STRs comply with the Building and Fire Codes if the STRs are designated an R-5 (Building Code) use group, which includes single-family detached, duplex, and townhouse dwellings. The Building Code allows STRs to operate in R-5 designated buildings that are not more than three stories and are below certain thresholds for the number of occupants and/or guestrooms to not be required to install items such as sprinkler systems and elevators, which are required of other transient dwelling facilities. Note that because apartment buildings are not classified as an R-5 (Building Code) use group, physical renovations may be necessary to operate a STR within any unit in the apartment building.

Another main component of the proposed regulations includes establishing minimum off-street parking requirements. To help protect neighborhoods, a new approach to minimum parking requirements for this particular use was proposed. The amendment is to add subsection (28) to Section 10-3-25 as shown below:

(28) Short term rentals shall provide one parking space for each guest room or accommodation space, or as may be more or less restrictive as conditioned by a special use permit.

The new approach referenced above is associated with the ability to lessen the parking requirements, through the SUP, when appropriate. As specified in the review criteria for SUPs in Section 10-3-125 of the ZO, if a particular STR request in a neighborhood is believed to “be consistent with good zoning practice and will have no more adverse effect on the health, safety or comfort of persons living or working in the area and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area...” but there is a concern regarding meeting the minimum off-street parking spaces on the parcel by converting yard areas to parking, or where parking might be accommodated via an existing driveway or along the public street, then staff would like to have the ability to recommend lessening the parking requirements. Such a practice could maintain a more residential look for STRs.

The proposed STR regulations also have civil penalties at a rate of \$100 for the first offense, \$200 for the second offense, and \$500 for any subsequent offense if they are found in violation of any regulation or requirement after receiving legal permission to operate. A separate penalty structure is proposed for individuals, who are found operating a STR without registering the use. The penalties for such a violation would be \$100 for the first offense and then \$500 for any subsequent offense.

As explained above, Option 1 would only allow STRs to operate with an approved SUP. As is the case for all SUPs, requests require public hearings at both PC and City Council (CC), advertisements in the local newspaper, adjoining property owners are notified of the public hearings, and subject properties are posted with signage advertising the request. The application fee is \$425 plus \$30 per acre. Something that is different from previous proposals is that if a property owner receives approval of their SUP to operate a STR, we are now proposing that the operator would be required to pay a \$50 fee to register the use. Remember that the \$425 plus \$30 per acre application fee is used to cover the costs for advertising the SUP in the newspaper. That fee does not cover administrative costs associated with registering the use and maintaining the register.

For those unfamiliar with SUP processes, once a SUP application is submitted, staff reviews the application and offers a recommendation of action to PC, who then makes a voting recommendation to CC on whether the request should be approved. The month following the PC public hearing, CC will hold their own public hearing to receive feedback while also reviewing staff's and PC's recommendations for action. During this meeting, CC typically votes to approve or deny the request. If the request is denied, the same request shall not be reconsidered within one year of the date acted upon by CC. Depending upon when a property owner submits a SUP application, the process takes about two to three months. Through the SUP review process, staff or PC may recommend conditions be placed on the approval of the permit. CC could reject or accept the conditions and/or establish any of their own. Example conditions for STRs, which would be determined on a case-by-case basis, might include, but are not limited to:

- Requiring the owner, tenant, or operator to occupy the property when the unit is not rented or even requiring the owner, tenant, or operator to occupy the unit during the rental period. In other words, the condition could be that the STR must be the principal residence of the owner or operator.
- Requiring additional parking spaces or allowing less parking spaces.
- Requiring the establishment of quiet hours.
- Limiting the number of lodgers allowed on the site at one time.
- Limiting the number of guestrooms allowed to be rented.
- Allowing the STR to be used for weddings, receptions, or events.
- Allowing PC or CC to revoke the SUP if violations are found or if the STR becomes a nuisance.

Option 2

Option 2 includes the same proposed amendments as specified in Option 1 to allow STRs by SUP, but also includes the addition of a new use called “homestay” that would be allowed by right with some limitations. The homestay definition is proposed as follows:

[Homestay: In a single-family detached, duplex, or townhouse dwelling unit, the provision of a bedroom or accommodation space within the principal building that is suitable or intended for transient occupancy for dwelling, sleeping, or lodging purposes and is offered in exchange for a charge for the occupancy, and where the operator is present during the lodging period.](#)

Homestays would be permitted by right within a single-family detached, duplex or townhouse dwelling unit within the following zoning districts: R-1, R-2, R-3 (Medium Density), R-4, R-5, R-6, R-7, MX-U, B-1, and U-R. Note that homestays would not be permitted within apartments, and would not be allowed in nonconforming dwellings within the M-1 and B-2 districts.

The proposed new article, Article DD, addresses registration requirements and regulations for both STRs and homestays. The registration process for both STRs and homestays would be the same in that registrations would be valid January 1st (or from the date the registration first occurs) through December

31st and must be renewed annually for a fee of \$50 each year. Additionally, both STRs and homestays would be limited to contracting with guests for a period of fewer than 30 consecutive nights, food service would be limited to guests, and operators shall comply with the Uniform Statewide Building Code and Virginia Statewide Fire Prevention Code.

Additionally, homestays must also comply with the following as listed in the proposed Section 10-3-205(5).

- Accommodation space may be rented for guest lodging for no more than forty-five (45) nights per calendar year.
- The number of guests at one time shall be limited to six (6).
- This operation shall not be marketed or used for weddings, receptions, or other events.
- Operators shall maintain the property as their primary residence, as indicated on a state-issued license or identification card.
- Operators shall be present during the lodging period.

Any operator who desires to do more than what is allowed in a homestay would have the option to request approval of a SUP to operate a STR.

Lastly, there are no off-street parking requirements proposed for homestays. Homestays are accessory uses to the principle residential use of the property. Given the limits proposed on the number of nights a homestay could be rented and the number of guests renting the homestay, staff has proposed no minimum parking requirements.

Additional Considerations

For brevity, and for this section only, use of the term STRs includes both STRs and homestays as proposed in Options 1 and 2.

STRs are intended for transient occupancy. Proposed Section 10-3-205(1) in both Option 1 and 2, along with the proposed definitions for STRs are intended to prevent operators from being able to rent to multiple unrelated individuals on repeated lodging contracts, which essentially could circumvent the occupancy requirements of the zoning district in which the use operated. Complaints of potential overoccupancy in residential units is one of the major concerns that staff receives on a routine basis, and therefore, we do not want to create any opportunities for abuse of STRs to disrupt the integrity of the ZO's occupancy regulations to protect neighborhoods. This is the main reason why staff has proposed the 45-night limit on the STR by right ability.

As noted by many articles, all over the country localities are concerned with the impact that STRs have on affordable housing stocks. In *The Sharing Economy*, Shafroth identifies a question that many are concerned with: "Are investors impinging on the stock of affordable housing, as they purchase homes to market as short term rentals?" Staff believes there is a threat to housing costs in Harrisonburg when STRs are in the marketplace, particularly if there are no regulations that require STRs to be occupied by long-term nontransient residents. If STRs were allowed as a by right use without regulations, then current property owners who rent property will be encouraged financially to switch operating long-term rentals (in which residents are more likely to use) to operating short term rentals (in which non-residents are more likely to use) and real estate investors (who may be local or non-local) will be encouraged to buy dwelling units with the express purpose of renting them short term. Because the total supply of housing is fixed in the short run, this drives up the rental rate in the long-term rental market. Therefore, staff believes that there must be regulations and limits imposed on STR operations.

The other side to the question/concern over affordable housing is that some individuals might want to operate STRs to supplement their income to help make ends meet. In terms of STRs, staff wants to allow for the evolution of the sharing economy to occur, but firmly believes it should not negatively impact a community or an individual's quality of life or to a neighboring individual's often biggest investment: their home and property. Zoning regulations offer some certainty for home buyers and property owners. For example, when someone purchases a home on residentially zoned property, because transient occupancy is not permitted, there is a degree of confidence that, although it is possible that a property could be rented to different people every month and have high turnover, such a residential environment is not likely to occur, thus there is some certainty that residents of the neighborhood will be relatively permanent, which in turn offers stability and community building. When short term renting enters a neighborhood that was not expecting such an environment, community instability can be the outcome. While homestays as proposed in Option 2 would require that the dwelling be the operator's primary residence and for the operator to be present during the lodging period, which alleviates some of staff's concerns about nuisance and high turnover, the City would have no ability to recall, review, and revoke Homestay Operator Registrations for violations that are not related specifically to a short term rental as listed in Article DD.

Staff believes the best way to manage STRs is by SUP as proposed in Option 1. This option creates the opportunity to allow STRs in the City while also providing the occasion for the neighborhood to share their thoughts and to protect the ideals of their community. Additionally, this option allows City Council to establish conditions on the SUP at the time of approval, which could include the ability to later recall the STR SUP for further review, which could lead to the need for additional conditions, restrictions, or revocation of the SUP. Note that there is no proposed mechanism to revoke a resident's ability to operate a homestay, only to issue civil penalties for violations. Staff discussed the idea of creating a revocation process, but chose not to propose the idea due to procedural issues of the revocation process and how to determine when permits should be revoked.

In *The Sharing Economy and Housing Affordability: Evidence from Airbnb*, Kyle Barron, Edward Kung, and Davide Proserpio found that STRs have led to increases in both rental rates and housing prices. However, the study further acknowledged that STRs increase the value of homes by allowing owners (and renters) to better utilize excess capacity. They suggested that regulations on STRs should "at most" (emphasis of Barron, et al.) seek to limit the reallocation of housing stock from the long-term to short term markets, without discouraging the use of home-sharing by owner-occupiers. Staff has proposed in Option 2 that homestays could be operated by anyone who uses the dwelling as their primary residence, which would include both owners and renters.

With regard to the Comprehensive Plan, staff believes the following goals and objective support the approach to regulate STRs as herein proposed:

Goal 5: To strengthen existing neighborhoods and promote the development of new neighborhoods that are quiet, safe, beautiful, walkable, enhance social interaction, and offer a balanced range of housing choices.

Goal 6: To meet the current and future needs of residents for affordable housing.

Furthermore, in the Comprehensive Plan Chapter 15 Revitalization, the Plan outlines specific programs or approaches to investigate or to implement when trying to protect areas that are identified as Neighborhood Conservation areas. Although these principles are associated with particularly designated neighborhoods, two of these approaches can be utilized throughout the City to help protect all neighborhoods. They include:

- Programs to facilitate home ownership and improve the quality of rental housing.

- Programs to reduce pressures to convert single family houses and lots to other uses.

For the amendments to Title 4 Finance, Taxation, Procurement, the necessary modifications are relatively minimal. To properly tax STRs, the main amendment needed within Section 4-2-76.1 (2) is to add “homestay” and “short term rental” to the definition of “Hotel” and to eliminate the reference to “other lodging places that offer lodging for four (4) or more persons at any one time.” The other proposed amendment was to Subsection (4) of Section 4-2-76.1 and is proposed for clarity. The modification includes amending the definition of “Transient” by eliminating the words “hereinabove” and replacing them with “in this section.”

Lastly, one of the most important pieces to the implementation of these regulations is enforcement. As most are aware, the longstanding policy of enforcement for land use matters occurs via three separate approaches: 1) during the pro-active code enforcement program; 2) when complaints are received (which may be submitted anonymously), properly investigated, and substantiated; and 3) when properties are under scrutiny for any kind of project or development proposal (i.e. subdivision, rezoning, special use permit, street closing, and other matters). If the regulations are approved, staff would like direction from CC as to how enforcement should occur. Should enforcement be handled as described above? Or, because of the concerns regarding STR impacts on affordable housing and for protecting and conserving neighborhoods, as well as the issue of the loss of the transient lodging tax, should staff take a more pro-active approach by utilizing the online platforms? As described earlier, operators found in violation of the code will receive an immediate civil penalty of \$100 and they will need to rectify the violation.

Staff and the Commissioner of Revenue suggest at least a 30-day grace period from the enactment of the amendments to the Zoning Ordinance and to Title 4 – Finance, Taxation, Procurement to allow for the community to learn about the approved regulations and to cease any illegal operations so that they may prevent themselves from penalties. To help spread the word, staff can issue a press release and communicate on social media to inform the public. Staff will also create a webpage on the City website dedicated to STRs explaining the regulations as well as the registration and licensing procedures.

Chair Way asked if there were any questions for staff.

Mr. Finks asked what the metrics were to come up with the 45-day limitation for Homestays.

Ms. Dang clarified that the limitation is 45 nights. The reason that we chose nights instead of days is that we assumed that people were staying overnight. We noticed that there were different interpretations of “days.” Does two days mean 4:00 p.m. to 10:00 a.m.? Is that two days or one day?

Mr. Fletcher recalled the conversations over the last year, including conversations with different localities and all the different options that localities are taking. Some localities had a 185-day limit. Some had a 90-day limit. We started considering the 90-day limitation. In speaking with someone from Lynchburg, I specifically asked the question: If you have a 90-day limitation, how do you count the number of days if someone rents from Friday to Saturday? He answered two days. We threw that question out among different staff, without any leading information. We received different interpretations across the board. We continued with the 90-day proposal but split it in half and specified “nights.” It is 45-nights, rather than trying to figure out what is meant when someone is staying for the day.

If you recall, this group discussed some of the concerns regarding that 45-day limitation. We talked about whether or not we wanted to have a limit to a certain amount of days. Ms. Dang alluded to the concerns about circumventing the Zoning Ordinance and occupancy regulations of the district. This helps, a little bit, because we were concerned that if we did not put a date on it, people would be circumventing the occupancy regulations. You would be increasing the number of people that are staying at the house. You could have a family and two boarders, plus anyone who is renting under the short term rental license. If you had this 45-night limit, it at least puts a threshold on it. If you are going to rent to someone for 28 or

29 nights, you have used up a lot of your allowance for the year. It is some control. The concern here, as we have discussed before, is how are we going to enforce that 45-night limitation?

Mr. Russ stated that we have a lot of authority to subpoena records. If you are violating occupancy regulations, the State Code is involved. If you do not cooperate, we can go to the magistrate and they will issue a subpoena. Records for your bank deposits may be requested so that we can see how many days you have been getting deposits from AirBnB, for example. The 45-night limit is probably the easier one to enforce, than the number of people or whether the owner is sleeping there.

Mr. Finks asked what is the reason for limiting the number of guests to six?

Mr. Fletcher said that it provides some accountability for the number of people that are going into the building, since we cannot go in for inspections where the Building Inspector can say that the building is X number of square feet, therefore you can have X number of people in it. It gives some level of indication that you should not be trying to over-occupy the building.

Mr. Finks asked why it was not based on the number of bedrooms in the house. I can imagine someone having a five-bedroom house can easily accommodate more than six people, and someone who has a two-bedroom house where six people would be too many.

Mr. Fletcher said that we will not know how many bedrooms someone has.

Ms. Dang added that the inability to perform inspections is a factor. Originally, when we proposed this to you in August, the thought was that we could do inspections, and, at that time, we could determine if the room is big enough, can have a X number of people in it and has X number of rooms, so that we could create the limits for that particular dwelling unit. Without the ability to do the inspections, we have no way of knowing. We felt that we needed a limit. We could not leave it open.

Mr. Colman asked if the business permit requires any statements from the owner regarding how many bedrooms they have. Is there a requirement asking that?

Ms. Dang asked if he meant the business license or the registration that we are proposing?

Mr. Colman answered that he meant the registration.

Mr. Fletcher said that we could go about it that way and go with the word of the applicant. That could be written into the code.

Mr. Colman said that it would determine how much capacity they had.

Mr. Fletcher said that the way it is written, unless you do not like it and would like to change it, the people who own and live in the house are in the house at the same time.

Mr. Colman said that is another good point right there. They are already occupying some of the space.

Ms. Dang said that if someone tells me that they have three bedrooms, that still does not answer how many people they could have there or what they can rent. We still need a formula or limit to apply based on the number of bedrooms that they tell us.

Mr. Fletcher added that you can have sleeping spaces that are not bedrooms.

Mr. Colman asked that if someone wants to do this as a business to supplement their income, is 45 nights a good investment? Is that enough? I am thinking from the standpoint of a business. Is it worth it? Are we limiting too much?

Mr. Fletcher responded that we did not think so. I do not know how many people with the idea of the Homestay are going to rent so often during the week. There are four weekends in a month. If you only rent on the weekend, you are going to capture many months.

Ms. Dang clarified that they have the ability to request a Special Use Permit if they want to do it as an investment property.

Mr. Fletcher said that is right. If there is any restriction that they do not like as a homestay, they can request a special use permit for a short term rental and have more flexibility.

Mr. Finnegan said that is why I am more inclined to vote for option number two. The data that I found through AirDNA.co showed that the majority of the money being generated is from whole home rentals. There is this idea that someone is making supplemental income by renting out a room now and then. If that is the case, and it is less than 45 nights a year, I feel the homestay is adequate. If someone is going to be making \$50,000 a year by renting out their whole home, that absolutely should require a special use permit. They can pay the \$425 fee and it is not a major hurdle. It also allows us the ability to say no, for reasons stated, on a case by case basis. We want to make sure that we do not have speculators buying up houses and turning them into hotels in the middle of a neighborhood. The fact that the homestay requires that the operator be present is going to stop many people from doing that. I have seen AirBnBs and they have been whole home rentals. That is what a lot of people are looking for. That is what the market is. We can regulate one thing, but the market is showing that people are after something else, and that is a whole home rental.

Chair Way stated that he appreciated the comments and the discussion. He reminded the Commissioners to keep their focus on questions for the time being.

Mr. Finks said that it seemed like a common thread in other cities, such as Blacksburg, that one of the limitations was that the operator has to be 18 years of age. It seems that many of the services you are going to use would already filter that out. Why do other cities add that restriction? Is there something outside of an AirBnB or any other service where we should be concerned that this be limited to people over the age of 18?

Ms. Dang responded that she did not ask other localities why they included that restriction, but we did not feel that it was necessary in the Zoning Ordinance.

Mr. Finks said that his next question related to the inspection. When someone gets an at home business license in town, what are they required to do by the City?

Ms. Banks explained that a “home occupation” is operated by a resident of a property or their family member residing there. They cannot have any employees coming to work there, in the building. They cannot have anything outside that is out of character with the single-family dwelling. They cannot have clients or customers coming to the house at any time. For example, if you are keeping books or doing taxes, you have to go out and meet your client elsewhere to collect their books and so forth. Only under those conditions do you get a home occupation permit.

Mr. Fletcher said that the nature of the use of the building has not changed for a home occupation permit. It has not changed its Building Code use group. It is still a single-family home. From the outside, you should not know that there is a business operating there.

Mr. Finks said that they have run into this issue with people getting business licenses for childcare. We are looking at re-visiting that issue because of at-home childcare. I recall that there was a discussion at one City Council meeting, last year, where we saw the limitation of how the code is currently written in the City for business licenses, where it makes it difficult to have childcare in residential areas. Were we planning to revisit that issue?

Mr. Fletcher explained that there are three different levels of childcare. There is “minor family day home,” “major family day home,” and “child day care center.” Child day care centers are only permitted in residential districts by special use permit, and only in R-3. Localities are preempted from regulating minor family day homes as long as they are below certain thresholds. They can only keep up to four

children, not counting the children residing in the home, up to the age of twelve. Once they start caring for five or more children, then localities can regulate. We require a special use permit for major family day homes.

Mr. Colman said that the no off-street parking requirement for homestays seems counter-intuitive. If the owner is required to be there, they are going to have their own vehicle, and there will be more vehicles coming to the site. It seems counter to the idea that additional parking spaces should not be required.

Mrs. Whitten agreed. It seems that the optimal time to have a guest would be when we are already crowded. In addition, many neighborhoods already have restrictive parking. That could be a problem for us.

Ms. Dang explained that the homestays are limited to 45 nights. How many more parking spaces do we want on the other nights of the year when we do not have a homestay? Of course, you can recommend amendments.

Mr. Fletcher added that it is intended to maintain the residential character of the site. To ensure it looks like part of the neighborhood, not a business.

Mrs. Whitten said that if it was in the summer in Old Town, that would never be a problem, but if it was during the school season, football season or graduation, 45 nights could be miserable.

Mr. Fletcher said that there are often private covenants and restrictions in neighborhoods in the City. Someone might not be aware of the private restrictions and might be able to continue operate business for years until someone moves in who is very aware of the covenants and restrictions resulting in a civil suit.

Mr. Finks asked that, if we were to consider Option 2 under our current enforcement, does it seem realistic that we would be able to enforce Option 2? Would there be a need for additional staff or funding to realistically enforce it?

Ms. Dang answered that if the Department of Community Development continued to conduct enforcement activities as they do currently, either by complaint or when the property is under scrutiny then that would be no problem.

Mrs. Whitten said that there would not be time to review the online platforms.

Mr. Fletcher said that staff is looking for guidance. It changes the environment and how we regulate land uses, especially when there are these platforms that give us answers. There is money involved and loss of money and loss of revenue. We are looking for that guidance to say yes, proactively, or continue with the status quo.

Mr. Finks said that his concern with Option 2 was that staff would not be able to look to see if someone has reached 47 days. They would not be able to check whether the operator is staying at the property. We would be setting up a scenario where neighbors could abuse the restrictions that we put in place in order to harass neighbors they do not like.

Chair Way said that one of the other potential problems with the proactive on-line enforcement is that sometimes the sites do not give specific addresses.

Mr. Finks replied that he is not suggesting that we need to be that strict. I am saying that some of these restrictions do not make sense. It seems that the only time they will come into play would be if there is complaint and if there actually is a problem.

Mr. Finnegan said that if an operator is required to be present during the lodging period and advertises a whole home rental, they have just told on themselves. That is one example of on-line enforcement. This is different than other types of zoning violations because there is a registry.

Mr. Colman said that homestay is an opportunity to bypass the special use permit fee. Why not choose Option 1? There is a fee and much more control. I am supportive of Option 1, as I was previously. Option 2 is too difficult to enforce. How do you know if the operator is staying in the home? It could be argued that the operator is part of the whole home. I have concerns with homestay in terms of enforceability. Anyone can do it if they want to, and then they can easily say that they were hoping to get a Special Use Permit. Well, they needed to do that before they shift into the other option. I think that is going to happen.

Mrs. Whitten asked, understanding that staff is recommending Option 1, what is your one pitch for Option 1. Why do you favor that?

Mr. Fletcher responded that Option 1 gives the most consistency across the field for enforceability. It protects neighborhoods from these uses popping up in spaces that are not desirable. There is this idea that it is not happening in Harrisonburg right now, so why are we worried about this? We do not really know if it is happening or not. But we know that there is a desire to lower the cost of housing and to help control the rental market in the City of Harrisonburg. There is no argument, in my opinion, that if you can turn over a space as a short term rental and make more money, because money is involved, it would drive up the cost of housing. The short term rental special use permit seems like the best way to prevent that issue. We have been doing that for years for bed and breakfasts. This proposal changes current regulations and makes it more flexible for people to operate a short term rental. It gives them the option to do more. It is not limiting the number of bedrooms. It is not limiting the number of nights. It creates more flexibility.

Mrs. Whitten said that she feels that Option 2 seems to be a lead-in to short term rentals and operators might never obtain the special use permit. I think people are geared to play the game that way.

Mr. Fletcher said that, although we can pull the subpoenas, I find it difficult to envision a situation in which we do that. What would be the circumstances that would lead to subpoena?

Mrs. Whitten said that she likes the piece in Charlottesville's summary about working smoke detectors, carbon monoxide detectors, and fire extinguishers. You are saying that we cannot go inspect, but they say city inspectors are authorized to enter the property.

Mr. Russ responded that Charlottesville has a fleet of attorneys on staff to defend them when things come up. We have two versus their eight.

Mr. Fletcher said that our counsel has advised that we cannot put Building Code regulations in the Zoning Ordinance. Those are Building Code violations. What you are not seeing in this proposal is the website that we already have drafted, the brochures to help people understand the process. We are going to capture some of those issues.

Mrs. Whitten said that she believes that safety should be key.

Mr. Colman asked if the thought is that these issues would be enforced by the market. Will people not like a place because they do not have smoke detectors? What is the expectation? The guests have no recourse to complain about any issues. We are not offering anything.

Mrs. Whitten asked if the guests could complain, and then it would be a property maintenance violation and subject to investigation.

Mr. Fletcher answered that he does not know. It is still an R-5 use of the Building Code, so it is still a single-family home or duplex unit. There are exemptions specifically built in for that use.

Mr. Romero said that given the number of localities that you looked into, we can look at best practices because some of these localities have learned by doing. We have the opportunity to not make the same mistakes. Have these localities done these practices over time and, if so, which one has done it for the longest? Since you spoke with them, have you done any follow-up? Have any of these localities changed the way they have done things over the last seven months, or so, since we have spoken with them?

Ms. Dang responded that she spoke with Charlottesville and Blacksburg most recently. Although I did not ask that specific question, I did not get any indication that they had made any changes.

Chair Way asked if there were any more questions. Hearing none, he opened the public hearing.

Mr. Panayotis Giannakaouros came forward. I think that both of these options are weak. I think that they have not adequately attended to the concerns of City Council when they tabled this proposal. We are still discussing residential character which was a term that I thought we had banished from this body. It has cropped up again, maybe to see if it will take root under the new Council. I hope it will not. Minneapolis just eliminated the R1 zoning category for good reason. We are still not making the right arguments with regard to data. The same data that was refuted before has been brought up again. We do not have evidence that these problems are happening in Harrisonburg. The fact that we do not have evidence does not logically justify the assumption that we do have the problems. It is hard for me to say anything because both options are weak. I look forward to City Council giving some clearer guidance, reemphasizing what Mr. Byrd gave you last time, and making it clear enough so that staff will be able to come back with something that will work.

Mr. Jeremy Litwiller, Realtor, asked how many complaints do we have currently regarding short term rentals and AirBnBs? Even though it is illegal, we know that there are a couple hundred operating in the City. Are we proposing these restrictions because of lots of people are having issues, currently? Or is it control? Is it taxation? What is the impetus behind needing, what I would consider some fairly onerous, restrictions on property owners in the City? How many complaints do we have? Do we know those numbers?

Mr. Fletcher answered that we have had two specific complaints. A lot of the drive here does come from the tax side of it, too, because there is a loss of tax revenue.

Mr. Litwiller said that in the County they just imposed the 5% transient occupancy tax on short term rentals. Is there a possibility for an intermediate step which could be the taxation to generate revenue that the City deserves for short term rentals? If you are going to do the business, pay the tax. Potentially, a registration, so that the City may have some control. I think that a \$425 fee, plus submittal, and the two months it takes for all the steps that you have to go through to get a special use permit approved seems very onerous for trying to fix a system that has had two complaints in the City. My experience with AirBnBs is that they mostly self-regulate. If you do not have a nice place on AirBnB, you are going to get bad reviews. People are not going to rent it. You are not going to want to continue. I see more long-term rentals in horrible conditions for which nothing is done. People still rent them. The owners are not required to do anything about it. I have been in some places that I did not want to wear my shoes when I came back out of the house. I have never experienced that with an AirBnB because I looked at reviews. People know that they have to look at the reviews. People know that those folks renting are going to look at reviews, so they are more inclined to maintain their properties, to fix up their properties. I feel that long-term rentals are not doing that. I do not see the magic that happens between day 30 and day 31 with regard to these rentals. The amount of people in and out of the house actually goes down in short term rentals. The traffic in and out of the neighborhood goes down. At my place, there are three of us, with three vehicles in and out multiple times a day. Short term rentals, even those who are very busy, do not usually have that much traffic. When I go on vacation, we take one vehicle. We are not in the house very much. We are there to do something else. We are probably not generating more traffic, more in and out, in the neighborhood. My opinion is that the proposed regulations are way overboard for what we see now. I would prefer to see something in terms of an intermediary step. If we are only seeing at two complaints so far, make a registry, tax it. Something similar to what the County is doing, to what the Town of Bridgewater is doing. I think they are at 4-1/2%. If it becomes a problem, then revisit and impose the regulations that are necessary to control the problem. I think it self-regulates. I think it is much too onerous to put this much control in place for a problem that does not currently exist.

Chair Way asked if there were any further comments. Hearing none, he closed the public hearing and opened the matter for discussion.

Mr. Colman responded, why are we doing this? The fact is that we have to do something. We are required to have local controls. Once you provide a use by right you cannot pull it back. That is the reason for the decision. If you want to protect the neighborhoods, once we give a by right, we cannot regulate it any further. That is the reason why we are going this route. With the Special Use Permit, we can have some control. The truth is that, most of the time, there is no issue. If there are no issues, then the operator can continue, with no complaints. If it is by right, and there are complaints, there is not much that you can do about it. There is nothing you can do.

Mr. Finks said that part of the concern that we have is not about the character of someone's AirBnB unit, or whether they are holding up to standards. The concern is that if we do this by right, then we are opening up a scenario where people who own apartment complexes or multiple units could take them out of the rental stock in Harrisonburg and make a lot more money turning them into AirBnB units than they would renting them out to residents, students, or whoever else needs affordable housing. When we talk about affordable housing, our concern is that we already have a lack of affordable housing in Harrisonburg. That is a problem that we have had, and it is a serious issue. It is becoming more of a problem. If we allow this use by right, the concern is that we are going to take what little affordable housing we have in Harrisonburg and turn all those from rentals into AirBnB units because by right that is essentially what we would allow anyone to do. The concern is not just about whether someone doing the things they need to do when they are running an AirBnB. The concern is that we do not want to see apartment complexes, houses, affordable housing in Harrisonburg disappear and turn into permanent AirBnB establishments, which has happened. There are a lot of reports where, in places like Miami and major cities, this has become a serious problem where whole apartment blocks have disappeared off the rental market. In Harrisonburg, right now, there is not a lot of new affordable housing being built at this time. We cannot afford to lose any of it. That is where a lot of my concerns come from—protecting our housing in Harrisonburg—not necessarily from someone running an AirBnB improperly but us completely losing an apartment for affordable housing into an AirBnB property.

Mr. Colman said that we discussed this for several months. We did consider, why not just let it be? If it is not broken, why fix it? We did have those arguments. Proposed that to staff. Went back and forth and decided that, if were to leave it, we would have no more control over it. One of the main issues was affordable housing or what housing would turn into. I agree with Commissioner Finks that that is one of the key elements that we considered when looking at this special use permit.

Chair Way asked if there were any thoughts about direction between Options 1 and 2. Do we have any consensus behind one of these options?

Mr. Colman said that Option 1 is the one that he prefers because it is the most consistent and the most enforceable. As a special use permit, if there are no issues, then there is no reason to enforce anything. Hopefully, that will be the case. Option 2 provides the opportunity for people to more easily go beyond, simply to avoid the fee. This is a one-time fee. The special use permit is forever unless it is revoked.

Mr. Fletcher said that there would be a \$50 annual fee for the short term rental operator's registration. When you apply for the special use permit that fee is to cover the costs for advertisements. That is why there is a fee. The State Code requires us to advertise for them. I believe that we, in addition to that, would be requiring a \$50 annual renewal of the operator's registration. The homestay is just a registry. It means that you apply and state that you are going to be doing this, and turn in an application, also with a \$50 operator's registration fee.

Mr. Colman asked if the fees include the \$30 per acre.

Mr. Fletcher answered that it does not for the annual registration. For a special use permit, it still does. If you have a 5,000 square foot lot, you are still paying the plus acreage because it is rounded up.

Mr. Colman asked if the acreage matters if the house is a small house and there is no difference in terms of what you are renting out.

Mr. Fletcher answered that you are still paying the base fee of \$425 plus \$30 per acre.

Mr. Colman said that we are in the City, so no one is allowed acreage. If you are in the County and you have 100 acres and just a small house in the corner are you paying for all of that?

Mr. Fletcher replied that he does not know how it works in the County.

Mr. Colman said that he is concerned that it seems that acreage does not apply here. It is not as if you are developing a site where the acreage matters. Here it does not really matter. Unless you expect people to have tents on the property.

Ms. Dang explained that the base fee ends up being \$455. As we were doing our analysis when we proposed the changes in fees we considered that an additional \$30 per acre would cover the cost of advertising.

Mr. Colman said that if you have a couple of acres then you have to pay \$60 to \$90 more. Is that what it is going to cost for advertising, or is the advertising still the same?

Chair Way asked if there was any momentum behind Option 1?

Mr. Finks said that looking at both options and the concerns that City Council had last year, I am not sure that we have addressed the concerns that they have brought up. I would be concerned sending either option at this point. I would be concerned that it still would not meet the mark for City Council to approve.

Mr. Finnegan said that he does not know how many chickens there are in Harrisonburg, but there is a number for the number of chicken permits. There are probably more chicken coops than are permitted. Right now, I am looking at AirBnB in Harrisonburg and it says that there are 145 options.

Mr. Fletcher asked if they were within City limits.

Mr. Finnegan answered in the Harrisonburg area. I agree with Mr. Finks. My concern is sending this to City Council. It is a modified version of what we have already sent to them, which was Option 1.

Mr. Fletcher asked could you give us some guidance on what you mean by you do not think that we are answering what City Council stated? We went back and watched the video and listened to the minutes and tried to capture some guidance in there, but it was rather vague as to what guidance they were providing. We had one council member who said that he liked the by right option. There was no other guidance.

Ms. Dang interjected that they also did comment that they would accept a cap on the number of nights.

Mr. Fletcher continued I am curious as to what you thought that City Council said that we did not do. We can go back and massage it into whatever you think we need to do.

Mr. Finks said that, if we are not going to allow it by right, if you are going to have to get a special use permit, the concern is the fee that each person is going to have to pay, which we cannot escape if we do it by special use permit, as that fee has to be there. The sense I got is that they are conflicted regarding this fee that citizens are going to have to pay to get a special use permit. That is the sense that I got.

Mrs. Whitten said that if you are going to do any business at all, if it is not a hobby, \$425 or \$455 should not be a deal breaker.

Mr. Finks said that could be debatable. It depends on where you are on the socio-economic ladder. For the people sitting up on this dais, it may not be much. There may be other people who want to take advantage of AirBnB, but that is too high a bar. We are not just talking about a fee. We are talking about a couple of months of putting in paperwork, coming before this body, and going before City Council.

Chair Way said that that may be an argument on behalf of Option 2 because they could do the homestay option.

Mr. Finks said yes, in some sense, but it still gets back to the initial issue we have with anything other than Special Use Permit. How do you enforce it? I do not see a logical way for staff to enforce that without complaints.

Mrs. Whitten asked if Mr. Finks is comfortable saying let people do it by right. If we have problems, then what?

Mr. Finnegan said that 145 people have short term rentals in our area right now and we are not capturing any of that tax.

Chair Way said that at least these options offer a mechanism.

Mr. Colman said that by State law we have to do something. We have to open a registry.

Mrs. Whitten clarified that we do not have to. We have permission to do so.

Mr. Finks said that his concern is not the 145 people. It is what happens when we make it by right beyond those 145 people.

Mr. Colman said that he was under the impression that we had to act.

Mr. Russ responded that the Commissioner of Revenue was concerned that at some point she has an obligation to go after people who she knows are not paying taxes, but there is no mechanism for them to register so that they can pay the tax. She cannot give them a business license because they are not operating a legal business, but she also knows that there is an illegal business going on that should be taxed. She is caught in this weird catch-22.

Mr. Colman asked if we could create a registry, whether you have to pay for it or not. You register and have a business license to operate it and use it by right.

Mr. Fletcher said that we can offer a homestay with no cap on the number of days. You can say, staff we do not like the 45-day cap. We do not like either of your options and you can do a homestay by right where you register with an application, no cap.

Mr. Colman said that what he was thinking is why not allow it to continue but have the business tax on it?

Mr. Fletcher said that it has to be compliant with the Zoning Ordinance.

Mr. Colman said well there you go, then we cannot.

Ms. Dang said that the by right and special use permit options have a spectrum about how much you can regulate. Those are the questions we had. The guidance that we could gather from you and Council, was to try to figure out if we would allow short term rentals by right or special use permit. Within each of those categories, what are the regulations or caps?

Mr. Colman said therefore we have to do it. My point was to push all the way to the reason. The gentleman who spoke asked why we are regulating it if we do not have to.

Ms. Dang said we would not be able to collect the business tax.

Mr. Colman continued, we have to because there are businesses operating illegally and we are allowing that. Is that what we are saying?

Mr. Fletcher said that we are not allowing it.

Mr. Russ said that the Commissioner has a legal obligation at some point to do something about an illegal business that is not paying taxes.

Mr. Fletcher said that the reason there are these people doing it illegally is because either in good faith they have no idea that they are doing it illegally or they might know our system and know that we are not coming after them because we have not been directed to go after them. If the Commissioner can go onto the site and tell me there are X number in the City limits, even if we do not get the addresses, our staff is intelligent enough that we can figure out the addresses. If we are told to do it, we will go after them. So then, if you make a decision to have penalties, we would find the folks that are operating, and we would give them penalties. I highly recommend that you make a decision even if that decision is to ask staff to change this and bring it back.

Chair Way said that absent these options there is no way that these people can get themselves out from under that illegality.

Mr. Fletcher said that the concern is in the non-conformance, not in not taking the use away. If you create the ability for homestays and two years down the road we say we hate this idea, then those people get a vested right. You cannot take their homestay away from them.

Ms. Dang said that legally those people who registered properly would keep whatever abilities they have as it is adopted. Anyone who registers in the future would have to comply with the new regulations.

Mrs. Whitten said that is just like any other.

Chair Way said our choices are that we can recommend Option 1 or Option 2 or modified versions. Do we also have the possibility of tabling this and asking Council what they were looking for?

Mr. Fletcher answered that they are looking for the Planning Commission's recommendation. They are looking for you to give them guidance. That is why this body exists—to vet those issues and to offer a recommendation to them.

Chair Way said that I thought we have.

Mr. Fletcher said you did. They responded saying that they wanted more time to understand what other localities are doing. We did that. We also created the ability to do a by right option if you wanted to do a by right option, which was the other clear guidance that we had. When I went back, in November 2018, I said that this is the direction in which we are going and asked if they like where we are going and got this sort of keep going guidance.

Chair Way asked if we can come to a consensus here about whether we are comfortable with making a recommendation for Option 1 or Option 2.

Ms. Ford-Byrd said I am hearing that we need more clarity from City Council. I do not know what the process is for that.

Chair Way answered that one way to get clarity from them is to send an option to them and see if it is thrown back to us. We vote on something here, recommend Option 1 or Option 2, and they can turn around and say what they want. That is the mechanism for it.

Mr. Colman said you do not mean Option 2, you mean whatever option we send up to them.

Chair Way said what I am trying to hear is a motion of any kind to move the conversation forward. I am not trying to foreclose conversation, I am trying to get something that we can respond to.

Mr. Fletcher asked whether he was speaking out of turn with his earlier comment about your responsibility to give them a recommendation. Is there any other guidance that staff wants to offer regarding what the expectation is?

Ms. Dang said the question is how do we best regulate short term rentals.

Chair Way said that staff has done wonderful work, looking at what other localities have done. You have been very thorough.

Mrs. Whitten said that we always try to be proactive. That is what this is about. This is not about whether we have enough complaints. The fact is that there are plenty of places that have the precedent indicating that there will be complaints. Do we just sit idly by and do nothing while this marches on? Time marches on and already has. Do we go ahead and take a stab at it? I think Option 2 is palatable to everybody because it gives everybody everything they want, but I think we hamstring staff with that. That is what they are telling us when they say they recommend Option 1. They see that it is going to be very hard to make enforcement work.

Chair Way agreed and said that in that spirit it is nice that you couched your recommendation in what the Comprehensive Plan is saying. That is helpful. I would invite any motions on each option and we can see which one prevails. Although, we could potentially end up with two recommendations going forward and that would be even more confusing.

Mr. Colman said that the 30-day grace period might not be enough. I think that we need to allow for longer than that because if anyone wants to get a special use permit, 30 days is not enough time.

Ms. Dang said that it would not be enforced while they were in that process. They have to submit an application within that 30-day period.

Mr. Colman asked do we want to go through 150-200 special use permits at one time? They are already operating. They will fall in line. Why can we not have a three-month or 90-day period?

Mr. Fletcher said that we could have a 60-day or a 90-day grace period. We would like to consider a grace period.

Mr. Finks asked if there is any interest by the Commission to have staff to come up with an Option 3; a by right option with a homestay.

Ms. Dang asked if Mr. Finks meant with no limit.

Mr. Finks said that he means something similar to what they have in Charlottesville. Is that what they have by right?

Ms. Dang said that Charlottesville has limits. With their Homestay, the operator must own the dwelling and reside in the dwelling for 180 days a year.

Mr. Finks asked are they getting that through a special use permit?

Mr. Fletcher answered no, it is like our homestay. If you look at our homestay and look at what Charlottesville is doing, there are a lot of similarities. I am not sure what a third option would do. What is it that you do not like about Option 2?

Mr. Finks said that the concern they keep getting from the public and the City Council is the idea of having to go before Planning, to staff, Council, and pay for a special use permit.

Mr. Fletcher said that homestays do not. They are by right.

Mr. Finks said that Option 3 would remove the option for the special use permit and remove the limitations for homestays. In other towns, they can do it year-round.

Mrs. Whitten said that Mr. Finks is saying to take the special use permit out of Option 2 and make it all homestay.

Mr. Finks said yes, by right homestays.

Mr. Fletcher asked that you want no special use permit option.

Mr. Finks said that is not what I am saying. I want the potential to see what it looks like.

Ms. Dang said with Option 2, what we are proposing is a homestay that is very similar to Charlottesville and Blacksburg with some minor differences. The Homestay is a by right ability with the restrictions of no more than 6 lodgers, 45 nights in a calendar year, and things like that. They do not have to go through a special use permit application process. They only have to pay \$50 a year to register with us at the same time that they come in to get their business license.

Mr. Finks said that the big difference that I am seeing is that they do not have a limitation.

Mr. Fletcher said the only thing is the day limitation.

Chair Way asked if the owners will need to be present.

Mr. Fletcher answered that we have that in there, so if you do not like the idea of having the owner be present, then suggest that that not be part of it. Those are the two differences between the Charlottesville homestay and our homestay. We want to require the operator to be present, because it gives on-site accountability, and the 45-night limit.

Mr. Finnegan said I think that Option 2 is the only option that addresses one of our biggest concerns, which is speculators coming in buying houses and flipping them into apartments. It puts some control in place for that. The rest of it is treating it much the way as Staunton, Charlottesville, and other cities have done.

Mr. Fletcher said that you can start with the 45-night limit and increase it down the road.

Mr. Finks said that he is leaning towards Option 2, but would like to amend it to increase the number of nights to 90 or more. Maybe start with 90. It seems like a strange number to start off at 45. Also, regarding the requirement of having the owner be in the residence, in the rental, I understand the purpose, and I like the requirement to have the owner be in the residence during the rental. However, people I know, when they are looking for AirBnBs, really do not want to stay with the owner of the house. In fact, that is often a deterrent for people to take a property, if the owner is going to stay there the whole time. It is great, in theory, that people would be able to contact the owner if there is an issue and he will be there on-site, but I think it is a hinderance for the people that are trying to get their properties rented. If they are saying that in every single one in Harrisonburg you are going to have an owner present.

Mr. Fletcher said to remember that, if they want to not be present or to have a whole home rental, all they have to do is apply for a special use permit.

Mr. Finks said that gets back to the issue we keep hearing from the public. They feel that it is too onerous.

Chair Way said in his opinion the presence of the owner is the critical thing. I think that is what makes it somebody visiting at your house, where the house stays as a house in a residential neighborhood rather than something that becomes a bit more commercial. It gets in the traps that we are talking about here in terms of houses set aside for short term rentals and removed from the home rental market. When I think of the number of nights, and some of the other issues, that to me is a turning point in what we are doing here.

Mr. Finks said that, in theory, I agree with you, but I foresee scenarios where you have an owner who is in a wheelchair or incapacitated in some way. Are they really going to be up to task on some of these things?

I do not see it as a magical cure that the owner will be there. That is great that if they are there, but what if they are out until five in the morning?

Chair Way said that it stops speculative house buying where somebody buys a place as an investment. If you talk about affordable housing.

Mr. Finks said that the fact that it is their residence is what stops that. I think that going the extra step and saying that they have to be there during the rental is unnecessary. The fact that it is their primary residence is what would stop that. I do not know that we need to go the extra step to say that they have to be there during the rental period, as well.

Mr. Colman said that I do not think they will be. I think that they are going to leave.

Mr. Finks said that people I know who live in other towns and who do AirBnB are renting their house when they are going on vacation or when they are leaving. Since they are not going to be in the house, they think, "I have a big empty house, what can I do with it?"

Chair Way asked if staff would be able to enforce primary residency?

Ms. Dang answered that we would look at their driver's license or some other form of identification.

Mr. Finks said I would be amenable to taking that out, "operators shall be present during the lodging period" knowing that that previous point is that it must be a primary residence. That is the sticking point. If it is not a primary residence, then they can apply for a special use permit.

Mr. Finks made a motion to recommend Option 2, amended to remove the last point of "operator shall be present during the lodging period" and to increase the number of nights to 90.

Chair Way said that we have a motion to approve Option 2 with some modifications, as presented. Do we have a second?

Mr. Finnegan seconded the motion. These are already happening, and I think that the City should be capturing that tax revenue.

Mr. Fletcher clarified that if you say 90 nights that means it is 180 days of the year that the site could be occupied, which is half of the year.

Mr. Finks said that that was correct.

Mrs. Whitten said that is a long time to be out of your house.

Mr. Russ said there would have to be rentals every other day, every other night.

Mr. Fletcher said that he just wants it for the public record. That is how I'm thinking about it.

Mr. Finks said that he thinks that is a potential. Think of all the professors in town that flew the coop after classes are over for the entire summer or gone during the holidays. I think that is a potential for a lot more than the 45 nights.

Chair Way said that we have a motion and a second with the Option 2 proposal, slightly modified. I am going to ask that this be a roll call vote. I am disinclined to support this for the reasons I was talking about. I am on the fence, in some respects. but I am disinclined to support it. Are there any more comments before we have the roll call?

With no further questions, Chair Way called for a roll call vote on the motion.

Mr. Colman – No.

Mr. Finks – Aye.

Mr. Finnegan – Aye.

Ms. Ford-Byrd – Aye.

Mr. Romero – Aye.

Mrs. Whitten – No.

Chair Way – No.

The motion passed 4-3.

Chair Way said Option 2, as amended, is recommended to City Council on March 12, 2019.

Mr. Fletcher said that we will send both options, as presented, with the amendment.

Chair Way thanked the Commissioners for the thorough discussion and analysis. I think that we hit on some good points. Thank you for going into such depth.

Mr. Colman said that the amendments make it more appealing.

Chair Way said that he thinks there is logic both ways on this issue. I think that there is a lot going on here.

Mr. Finks said that his thought process to amend it is not going to make anything easier for staff, as far as enforcement. I do not mean to make that job any harder than it already is going to be. The idea for me is to send forward to Council something that is more in line with the thoughts from the public comments.

Mr. Finnegan agreed, saying that he does not believe anything is perfect. Hopefully, Council will add their own amendments and be able to bring it in line with what they want.

Mr. Romero said that he needed to vote to move it forward in one way or another. I do like the fact that Council will see both options. We may come up with a third option. We will see.

Ms. Dang said that you will have three options. The two that were proposed here and the amendment.

Respectfully Submitted,

Alison Banks

Alison Banks

Senior Planner